



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

Taryn Kiekow Heimer
Senior Policy Analyst
Natural Resources Defense Council
1314 Second St.
Santa Monica, CA

3/31/2017

Re: EPA-R10-2017-004880 Confirmation of Clarification and Next Steps

Dear Ms. Heimer:

This letter is in response to your FOIA request, EPA-R10-2017-004880. Your original request sought the following:

- 1) Any and all records, documentation, internal and external communications, phone logs, schedules and/or meetings between EPA and Members of Congress, including any representatives or staff, concerning or informing the potential rescission or withdrawal of the Proposed Determination and/or Watershed Assessment made on or after November 8, 2016.
- 2) Any and all records, documentation, internal and external communications, phone logs, schedules and/or meetings between EPA and the Pebble Limited Partnership, Northern Dynasty Minerals, and/or its officers and directors concerning or informing the potential rescission or withdrawal of the Proposed Determination and/or Watershed Assessment made on or after November 8, 2016.
- 3) Any and all records, documentation, internal and external communications, phone logs, schedules and/or meetings between EPA and the U.S. Department of Justice concerning or informing the potential rescission or withdrawal of the Proposed Determination and/or Watershed Assessment made on or after November 8, 2016.
- 4) Any and all records or communications from the Trump Administration, the Trump transition team, and/or "beachhead" units concerning or informing the potential rescission or withdrawal of the Proposed Determination and/or Watershed Assessment.
- 5) Any and all records or communications from the Trump Administration, the Trump transition team, and/or "beachhead" units concerning or informing EPA use of Section 404(c) of the Clean Water Act and/or the permitting process for the proposed Pebble Mine.

6) Any and all records, documentation, internal and external communications, phone logs, schedules and/or meetings between EPA and the U.S. Army Corps of Engineers regarding the proposed Pebble Mine, Bristol Bay, Alaska, and/or EPA's use of 404(c) with regard to disposals at the Pebble Deposit Area made on or after November 8, 2016.

7) Any and all records, documentation, internal and external communications, phone logs, schedules and/or meetings regarding the Proposed Determination, Watershed Assessment, agency use of Section 404(c), and/or the proposed Pebble Mine, including but not limited to, records and communications from the following individuals and entities:

- a. Administrator Scott Pruitt
- b. David Schnare
- c. Justin Schwab
- d. Ryan Jackson
- e. Samantha Dravis
- f. Bryon Brown
- g. Alex Hass

Clarification

On March 27, 2017 you spoke to Ashley Palomaki and I regarding the scope of your request. On March 29, 2017 I contacted you about specific follow-up items. During these conversations you clarified your request as discussed below.

Date Range:

November 8, 2016 – March 27, 2017

Subject Matter:

During the March 27, 2017 call, you clarified the scope of your request. You indicated that you are interested in:

1. All internal records, documentation, phone logs, schedules, and/or meetings involving the pre-inauguration Trump Transition team, the post-inauguration Trump beachhead team, and Administrator Pruitt's office about (1) withdrawal or rescission of the Bristol Bay Watershed Assessment; (2) withdrawal or rescission of the 2014 Proposed Determination regarding the Pebble deposit; (3) EPA's use of Section 404(c) with regard to the Pebble deposit; and (4) EPA's use of Section 404(c) generally.

2. All external communications from the post-inauguration Trump beachhead team and Administrator Pruitt's office to the non-EPA parties listed below about (1) withdrawal or rescission of the Bristol Bay Watershed Assessment; (2) withdrawal or rescission of the 2014 Proposed Determination regarding the Pebble deposit; (3) EPA's use of Section 404(c) with regard to the Pebble deposit; and (4) EPA's use of Section 404(c) generally.

External parties:

- Members of Congress, including any representatives or staff
- Pebble Limited Partnership, Northern Dynasty Minerals, and/or its officers and

- directors
- U.S. Department of Justice
- U.S. Army Corps of Engineers

Key Words:

“404c” or “404(c)” or “Pebble Mine” or “Bristol Bay” or “Watershed Assessment” or “Proposed Determination” or “Pebble Deposit”

Custodians:

There are three groups of EPA staff relevant to the request:

Group A: Members of the Post-Inauguration Beachhead Team and Administrator Office Staff

- ☐ Administrator Pruitt*
- ☐ Ryan Jackson *
- ☐ Layne Bangerter
- ☐ Don Benton
- ☐ Byron Brown *
- ☐ Samantha Dravis *
- ☐ Doug Ericksen
- ☐ Holly Greaves
- ☐ Sarah Greenwalt*
- ☐ John Konkus
- ☐ David Kreutzer
- ☐ Charles Munoz
- ☐ Justin Schwab
- ☐ George Sugiyama
- ☐ Patrick Davis
- ☐ David Schnare

*Not part of the “Beachhead Team”

Group B: Career Senior Leadership that may have communicated with the Post-Inauguration Beachhead Team and Administrator Office Staff

During the March 29, 2017 follow-up call, you expressed concern that there may have been communication that occurred via Administrator Pruitt’s private e-mail to career staff about the Bristol Bay matters that are the subject of this request. You requested that EPA propose 2-3 additional key career staff to search for any such communication. Therefore, the Group B list is:

- ☐ Kevin Minoli
- ☐ Michelle Pirzadeh
- ☐ Mike Shapiro

Group C: EPA staff that may have communicated with the pre-inauguration Trump Transition

team.

During the follow up- phone call with you on March 29, 2017, I explained that all communications between the transition team and career staff were directed to go through Shannon Kenny in the Office of Policy. Therefore, the Group C list is:

- ☐ Shannon Kenny

For Request 1, Group A, B, and C custodians will be searched.

For Request 2, Group A custodians will be searched.

Processing Priority

Your priority is for communications from Administrator Pruitt or the Trump Transition Team to agency career employees about the topics described in Request 1 above. Therefore, your preference for processing is to prioritize Request 1 above.

Processing Fees

On March 23, 2017, the EPA's National Freedom of Information Office granted the fee waiver request that accompanied the FOIA request. Therefore, you will not be assessed fees.

Extension of Time and Estimated Date of Completion

Pursuant to 40 C.F.R. § 2.104(d), an extension of time to respond to your request is necessary. Given the scope of the request, EPA anticipates that the response will require EPA to:

- ☐ search for and collect the requested records from multiple EPA offices that are separate from the office processing the request and/or
- ☐ require consultation with another agency having a substantial interest in the determination of the request.

As we discussed on March, 29, 2017 the processing clock has been restarted for your FOIA request. Your request is currently due on April 25, 2017. You have requested rolling productions if possible.

Next Steps

EPA has initiated the coordination of and search for responsive records in our files. During the call, we agreed to set up regular check-in calls to keep you updated. **Our next call is scheduled for April 8, 2017 at 1:00 Pacific/ 4:00 Eastern.**

Please contact me at walker.denise@epa.gov or at (202) 564-6520, if you have any questions about your request. Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202) 566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; email, ogis@nara.gov; telephone, (202) 741-5770 or (877) 684-6448; or fax, (202) 741-5769

If you wish to request information connected to this request in the future, please reference the

FOIA request number.

Sincerely,

/s/ Denise A. Walker

Denise A. Walker
Office of General Counsel